

REMARKS

I. Introduction

Upon entry of the present amendment, claims 1, 3-8, 10-38, 41, 42, 47, 49, 51, 53, 56, 57, 59, 61, 63, 66-69, 71, 73, 74 and 76 will be pending in this application. Claims 1, 10-13, 35, 36-38, 41, 42, 47, 49, 51, 53, 56, 57, 59, 61, 63, 66-69, 71, 73, 74 and 76 have been amended. No new matter has been added. Upon entry of this amendment and response, this paper cancels without prejudice claims 2, 9, 39, 40, 43-46, 48, 50, 52, 54, 55, 58, 60, 62, 64, 65, 70, 72 and 75. Applicants respectfully request reconsideration of the various rejections and objections in the Office Action based upon the following remarks.

II. Objections and Rejections related to the Declaration

The reissue oath/declaration filed with the application has been objected to as defective because it fails to identify at least one error that is relied upon to support the reissue application. Applicants respectfully submit that the supplemental reissue oath/declaration filed herewith identifies at least one error relied upon to support the reissue application and thus, overcomes the Examiner's objection. Applicants respectfully remind the Examiner that the application has been granted Rule 1.47(a) status and that all named inventors except inventor Cuckler, who refuses to execute the declaration, have signed the attached declaration.

The Examiner has rejected claims 1-76 as being based upon a defective oath/declaration under 35 U.S.C. § 251. Applicants respectfully submit that the supplemental reissue oath/declaration filed herewith overcomes the Examiner's rejection.

III. Objections to the July 8, 2002 Information Disclosure Statement

The Examiner has indicated that certain references were not considered because a concise explanation of the relevance was not presented. Applicants respectfully submit a concise explanation of these references below.

DOCUMENT NUMBER	DATE	COUNTRY	CONCISE EXPLANATION
88 07 947.3	09/22/98	Germany	This document appears to disclose an acetabular shell that includes a number of ridges and a protrusion on its outer convex surface.
88 08 699.2	09/14/89	Germany	This document appears to disclose a prosthesis with a number of holes extending through it as well as a pair of notches.
24 10 057	07/24/75	Germany	This document appears to disclose a bone plate with a number of holes extending through it.

IV. Objections to Newly Presented Claims

The Examiner has required that the Applicants particularly point out, claim by claim, support in the original disclosure for the newly presented claims. Because Applicants have amended several claims in the present amendment, Applicants submit a claim by claim identification of support for all pending claims. Support for the pending claims can at least be found in the locations identified below.

CLAIM	SUPPORT IN '870 PATENT
1 and 3 - 8	Figs. 13-19; Col. 4, lines 50-54; original claims 1 and 3 - 8.
10	Original claim 10.
11	Original claim 11.
12	Original claim 12.

CLAIM	SUPPORT IN '870 PATENT
13	Figs. 13-19; Col. 4, lines 50-54; original claim 13.
14 - 34	Original claims 14 -34.
35	Figs. 13-19; Col. 4, lines 50-54; original claim 35.
36	Original claim 36.
37	Original claim 37.
38	Original claim 38.
41	Original claim 41.
42	Original claim 42.
47	Figs. 13-19; Col. 4, lines 6 – 11, lines 19 – 24, line 28, lines 50-54; Col. 5, lines 1 – 7.
49	Col. 4, lines 24 – 27.
51	Col. 4, lines 19 – 24.
53	Col. 4, lines 24 – 27.
56	Figs. 13-19; Col. 4, lines 6 – 24, lines 50-54; Col. 5, lines 1 – 7.
57	Col. 4, lines 37 – 43.
59	Col. 4, lines 24 – 27.
61	Col. 4, lines 22 – 24.
63	Col. 4, lines 24 – 27.
66	Fig. 13-19; Col. 4, lines 50 –54, lines 63 – 64; Col. 5, lines 1 – 7.
67	Figs. 1 – 5, Figs. 12 – 13; Col. 5, lines 1 – 7.
68	Col. 4, lines 28 – 24.
69	Col. 4, lines 24 – 27.
71	Col. 4, lines 21 – 24.
73	Col. 4, lines 50 – 54; Fig. 9; Fig. 13.
74	Col. 4, lines 24 – 27.
76	Figs. 13-19; Col. 4, lines 50-54; Col. 5, lines 1-4.

V. Rejections under 35 U.S.C. § 112

The Examiner has rejected claims 1-12, 35-46, 53 and 56-66 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim

the subject matter which applicant regards as the invention. Applicants respectfully submit that the amendments to the claims overcome the rejections and request reconsideration and withdrawal thereof. Parts (a) and (d) of claim 1 have been amended to reflect that, as suggested by the Examiner, the annular reinforcements are positioned on the convex, proximal side rather than on the concave, distal side. The misspelling of the word "proximal" in claim 1 has been corrected. Part (f) of claim 1 has been amended so that it is easier to comprehend. The grammatical error in claim 11 has been corrected. Claim 35, part (d), lacked proper antecedent basis for the phrase "the distal surface" and has been amended to omit the term "the distal surface." Claims 35-46 have been amended to refer to the various "flanges" consistently. Claim 53 has been amended to recite "a diameter". Claim 56 has been amended to omit the references to "at least one fixation member." Claim 66 has been amended to clarify that the flanges extend from the cup body.

VI. Claim Rejections Under 35 U.S.C. §§ 102 and 103

Applicants respectfully submit that none of the references cited by the Examiner, standing alone or in combination, teach, suggest or disclose the limitations of any of the rejected claims as amended.

Claims 1, 3-8 and 10-13 all at least require an acetabular prosthesis having a superior flange extending in a superior direction from adjacent an annular rim of a cup body, a posterior flange extending in a posterior direction from adjacent the annular rim of the cup body, an inferior flange extending in an inferior direction from adjacent the annular rim of the cup body, and a concave surface extending distally to a greater extent adjacent the superior and posterior flanges than at other positions around rim of the cup.

Claims 35-38, 41 and 42 all at least require an acetabular prosthesis having a superior flange extending in a superior direction from adjacent a rim of a cup member, a posterior flange extending in a posterior direction from adjacent the rim of the cup member, an inferior flange extending in an inferior direction from adjacent the rim of the cup member, and a concave surface extending distally from a rim plane to a greater extent adjacent the superior and posterior flanges than at other positions around the rim of the cup.

Claims 47, 49, 51, 53 and 76 all at least require an acetabular prosthesis having a superior flange extending in a superior direction from a cup member, a posterior flange extending in an inferior direction from the cup member, an inferior flange extending in an inferior direction from the cup member, and a concave surface extending distally to a greater extent adjacent the superior and posterior flanges than at other positions around the cup member.

Claims 56, 57, 59, 61, and 63 all at least require an acetabular prosthesis having a superior flange extending in a superior direction from a cup-shaped device, a posterior flange extending in a posterior direction from the cup-shaped device, an inferior flange extending in an inferior direction from the cup-shaped device, and a distally extending concave surface extending distally to a greater extent adjacent the superior and posterior flanges than at other portions around the cup-shaped device.

Claim 66 at least requires an acetabular prosthesis having a superior flange extending in a superior direction from adjacent a cup body, a posterior flange extending in a posterior direction from the cup body, an inferior flange extending in an inferior direction from the cup

body, and a concave surface extending distally to a greater extent adjacent the superior and posterior flanges than at other positions around a rim of the cup body.

Finally, claims 67-69, 71 and 73-75 all at least require a superior flange extending in a superior direction from a cup, a posterior flange extending in a posterior direction from the cup, an inferior flange extending in an inferior direction from the cup, and a concave surface extending distally to a greater extent adjacent the superior and posterior flanges than at other positions around the cup such that the concave surface supports and maintains at least one of a cement mantle and a liner.

To anticipate a claim, a reference must teach each and every element of the claim, either expressly or inherently. *See* M.P.E.P. § 2131. To establish a prima facie case of obviousness, three criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the references or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art references when combined must teach or suggest all the claim limitations. *See* M.P.E.P. §2142. Applicants respectfully submit that none of the references cited by the examiner, standing alone or in combination, teach, suggest or disclose each and every element of any of the rejected claims as amended.

Adyasov et al. teaches a metal cup with “outer and inner surface projections with cutting edges” which “ensure that the cup is retained reliably in the cotyloid cavity, and the insert is retained in the cup.” *Adyasov* does not teach, suggest, or disclose including flanges extending from the metal cup. *Zichner et al.* teaches using an acetabular socket supporting ring for securing an insert into a socket cup in a cement-free manner. *Capello et al.* teaches

an acetabular shell that includes a hooked portion to facilitate securing the shell to a pelvis. Neither *Zichner* nor *Capello*, alone, or in combination, teach, suggest, or disclose a superior flange, posterior flange and inferior flange extending in superior, posterior, and inferior directions respectively. Because none of these references, whether standing alone or in combination, teaches, suggests or discloses at least the above mentioned claim limitations, Applicants respectfully request reconsideration and withdraw of the §102 and §103 rejections to the claims as amended.

CONCLUSION

In light of the amendments and the above remarks, Applicants are of the opinion that the Office Action has been completely responded to and that the application is now in condition for allowance. Such action is respectfully requested.

If the Examiner believes any informalities remain in the application that may be corrected by Examiner's Amendment, or there are any other issues that can be resolved by telephone interview, a telephone call to the undersigned attorney at (404) 815-6291 is respectfully solicited.

Respectfully submitted,



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